

Docket: B191000CIPCON
U.S. App. No.: 10/667,921

REMARKS/ARGUMENTS

Applicants have amended claims 39-48, 52-54 and 65-69, and have cancelled claims 27-38, 49-51, 60-64 and 70-75. Claims 39-48, 52-59 and 65-69 are presently pending in the application.

Applicants request that the Final Office Action mailed July 13, 2007 be withdrawn, as being improper. In particular, while acknowledging the properly and timely submitted Request for Continued Examination of April 16, 2007, the Office Action, nonetheless, and apparently without justification, issued the current communication as a Final Office Action.

A new, non-final Office Action thus should be issued. As an alternative, a Notice of Allowance could be issued, to which action Applicants would not object.

Regarding particulars of the outstanding Final Office Action, it objected to Applicants' February 8, 2006, July 20, 2006 and March 8, 2007 amendments under 35 U.S.C. 132(a) for allegedly introducing new matter, and rejected claims 27-69 under the first paragraph of 35 U.S.C. 112 as allegedly failing to comply with the written description requirement. Applicants respectfully disagree with these actions.

Responsive to these objections and rejections, however, Applicants have amended the first paragraph of the Detailed Description to conform with the Office Action's requirement that incorporation by reference be made only to the disclosure of U.S. Application No. 09/188,072. Applicants further have amended the first paragraph of the Detailed Description to conform with the Office Action's requirement that U.S. Provisional Application No. 60/064,465 not be included in the continuing data, since, presumably, such status is inherent.

Regarding the Office Action's objection to Applicants' claim language directed to obstructions not being present between the cannula lumen and an area of tissue located distally of (beyond) the open cannula distal end, Applicants submit that the currently pending claims, as amended, do not contain any such limitation.

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Furthermore, Applicants respectfully submit that the presently pending claims, as amended, are free of any limitation specifying action on tissue within the cannula when the interaction zone is outside of the cannula.

Accordingly, it is respectfully requested that the objections under 35 U.S.C. 132(a) and the rejections under the first paragraph of 35 U.S.C. 112 be reconsidered and withdrawn.

Regarding the prior-art of record, the Office Action rejected claims 27-53, 60-64 and 70-74 under 35 U.S.C. 103(a) as allegedly being unpatentable in view of a combination of prior-art references, and rejected claims 55-59, 67-69 and 75 under 35 U.S.C. 103(a) as allegedly being unpatentable in view of another combination of prior-art references.

In response, Applicants continue to maintain that the claimed invention is neither anticipated nor obvious in view of any of the prior-art references of record, taken separately or together, in any combination, either in structure or in process. With respect to dependent claims not specifically mentioned, it is submitted that these claims are patentable not only by virtue of their dependencies upon the respective base claims, but also for the totality of features recited therein.

The Examiner's attention is directed to claims 54, 65 and 66. In particular, while not agreeing with the above rejections, Applicants would like to thank Examiner David M. Shay for his thorough search and review of the prior-art, his careful consideration and examination of the present application and claims, and his indication by implication that claims 54, 65 and 66 may contain allowable subject matter. More specifically, it would appear that claims 54, 65 and 66 were not rejected on prior art. Applicants have amended the current application so that all claims now ultimately include the limitations of one or more of these three claims, and thus assert that all presently pending claims in the current application define over the prior art of record.

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Accordingly, it is respectfully submitted that the current claims in the subject application patentably distinguish over, and are allowable over, the prior art of record. Reconsideration and withdrawal of the rejections under 35 U.S.C. 103(a) is respectfully requested.

Applicants submit that the application is now in condition for allowance, and an early indication of same is requested. The Examiner is invited to contact the undersigned with any questions.

Respectfully submitted,


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